



# PUBLIC NOTICE

**Federal Communications Commission**  
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**May 28, 2004**

**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER BY THE CITY OF BAYONNE, NEW JERSEY, THE COUNTY OF BERGEN, NEW JERSEY, THE BOROUGH OF FORT LEE, NEW JERSEY, THE JERSEY CITY, NEW JERSEY POLICE DEPARTMENT, THE MELVILLE, NEW YORK FIRE DISTRICT, THE COUNTY OF SOMERSET, NEW JERSEY AND THE SYOSSET, NEW YORK FIRE DISTRICT**

**Comment Date: June 7, 2004**

**Reply Date: June 14, 2004**

By this Public Notice, the Wireless Telecommunications Bureau seeks comment on a proposal by seven public safety agencies in the New Jersey/New York area to operate their radio communications systems on unassigned paging channels. They contend that use of the subject channels is necessary due to the lack of available public safety channels. Specifically, on April 14, 2004, the City of Bayonne, New Jersey (Bayonne), the County of Bergen, New Jersey (Bergen), the Borough of Fort Lee, New Jersey (Fort Lee), the Jersey City Police Department (Jersey City), the Melville, New York Fire District (Melville), the County of Somerset, New Jersey (Somerset) and the Syosset, New York Fire District (Syosset) (collectively referred to as the public safety agencies) jointly filed a proposal to augment the pending individual applications of each agency to use frequencies allocated in Part 22 as paging control and trunked mobile channels to support the communications requirements of the public safety officers of each agency. The proposal encompasses the use of unassigned Part 22 channels, the deletion of channels currently licensed to several of the public safety agencies so that the channel may be assigned to another agency, and the deletion of pending requests so that a channel may be licensed to another agency. The public safety agencies assert that the proposal was submitted for the purposes of assisting public safety communications and presenting a resolution to the Commission of all the pending applications in a manner that promoted efficient and effective spectrum utilization and management.

By way of background, Bayonne proposes exclusive use of frequency pairs 470.0375/473.0375, 470.1750/473.1750, 470.2875/473.2875, 476.1250/479.1250, 476.1750/479.1750, and 476.2500/479.2500 MHz. In addition, Bayonne proposes exclusive use of frequency 473.0875 MHz for mobile communications. Frequency 470.0375 MHz is currently licensed to Fort Lee. Frequency pair 470.2875/473.2875 MHz previously was licensed to Somerset under call sign WPPB311 but has been deleted under FCC File No. 0001647432. Frequency 473.1750 MHz is licensed to Jersey City under call sign WPXI593. Under the proposal these frequencies would be licensed to Bayonne. Frequencies 473.0375, 473.0875, 470.1750, 476.1250/479.1250, 476.1750/479.1750, and 476.2500/479.2500 MHz are unassigned Part 22 frequencies subject to applications by Bayonne, FCC File Nos. 0000941858 and 0001523313.

Bergen proposes use of frequency pair 470.2375/473.2375 MHz for interoperability communications with the County's municipal law and public safety agencies under application FCC File No. 0001687496. Frequency 470.2375 MHz is currently subject to an application filed by Bayonne, FCC File No. 0001523313. Frequency 473.2375 MHz is an unassigned Part 22 frequency. Under the proposal, this frequency pair would be licensed to both Bergen and Melville as a result of the geographic separation of and agreement by both parties to the proposal.

The proposal envisions Fort Lee's exclusive use of frequency pairs 470.0500/473.0500, 470.1875/473.1875, 470.2750/473.2750, 476.0500/479.0500, 476.1000/479.1000, and 476.2625/479.2625 MHz, with frequencies 473.0125 and 479.1375 MHz for mobile communications. Under the proposal, frequencies 470.0500, 470.2750/473.2750 MHz, currently licensed to Jersey City under call sign WPXI593, would be deleted and licensed to Fort Lee. Frequency 479.1375 MHz, currently licensed to Syosset under call sign WPYJ816, would also be licensed to Fort Lee as a result of the geographic separation of and agreement by both parties to the proposal. Frequencies 473.1875 and 476.2625/479.2625 MHz are currently licensed to Fort Lee under call sign WPWS499. Frequencies 473.0500, 479.0500, and 476.1000/479.1000 MHz are unassigned Part 22 frequencies subject to an application filed by Fort Lee, FCC File No. 0001535270. Unassigned Part 22 frequencies 470.1875, 473.0125 and 476.0500 MHz are subject to applications filed by Bayonne, FCC File Nos. 0001523313 and 0000941858, and under the proposal would be licensed to Fort Lee.

Under the proposal, Jersey City would have exclusive use of frequency pairs 470.0625/473.0625, 470.1125/473.1125, 470.2625/473.2625, 476.0250/479.0250, 476.0875/479.0875, 476.1500/479.1500, 476.2250/479.2250, and 476.2750/479.2750 MHz, with frequency 473.2125 MHz for mobile use. Frequencies 470.1125 and 470.2625/473.2625 MHz are currently licensed to Fort Lee under call sign WPWS499 and under the proposal would be licensed to Jersey City. Frequency 470.0625 MHz is subject to an application filed by Bayonne, FCC File No. 0001523313. Frequency 473.0625 MHz is currently unassigned in the New York area. Under the proposal, these frequencies would be licensed to Jersey City. Jersey City is currently authorized to use frequencies 476.0875, 476.2750/479.2750, and 479.2250 MHz under call sign WPXI593. Unassigned Part 22 frequencies 473.2125 and 476.0250/479.0250 MHz are currently subject to an application by Jersey City, FCC File No. 0001628636. On May 6, 2004, Jersey City amended this application and associated waiver request to include unassigned Part 22 frequency 476.2250 MHz. Unassigned Part 22 frequencies 473.1125 and 476.1500/479.1500 MHz are currently subject to applications filed by Bayonne, File Nos. 000941858 and 0001523313.<sup>1</sup> Unassigned Part 22 frequency 479.0875 MHz is subject to an application filed by Somerset, File No. 0001196273. The proposal calls for these frequencies to be licensed to Jersey City.

Melville would receive use of frequency pairs 470.1625/473.1625 and 470.2375/473.2375 MHz under the proposal. Melville has a pending application for Part 22 frequency pairs 470.1625/473.1625 and 470.2375/473.2375 MHz, FCC File No. 0001593425. Frequency 473.1625 MHz is currently licensed to Fort Lee under call sign WPWS499, and frequency 470.2375 MHz is currently subject to an

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<sup>1</sup> Station KPD955, Arch Wireless Licensee Company, LLC (Arch), Blooming Grove, New York, operates on adjacent frequency 476.1625 MHz. Arch, a paging licensee, has supplied a letter of concurrence for Bayonne's application, FCC File No. 0000941858, to operate on frequency 476.1500 MHz. See Letter from Joseph F. Mullin, Vice President of Engineering, Arch, to Emil Vogel, Vogel Consulting Group, Inc. (dated Nov. 11, 2003). Under the current proposal, Jersey City would be licensed on this frequency. In an effort to facilitate the expeditious resolution of this matter, the Bureau will provide Arch a copy of this *Public Notice* and invite Arch to provide specific comment as to whether their letter of concurrence is affected by the current proposal to license Jersey City rather than Bayonne on this frequency.

application filed by Bayonne, FCC File No. 0001523313. Under the proposal, this frequency pair will be licensed to both Melville and Bergen as a result of the geographic separation of and agreement by both parties to the proposal. Unassigned Part 22 frequency 470.1625 MHz is subject to an application filed by Melville, FCC File No. 0001593425.

The proposal includes Somerset being authorized exclusive use of frequency pairs 476.0125/479.0125 and 476.0625/479.0625 MHz and frequencies 470.1375 (pager), 473.0250 (mobile), 473.2000 (mobile), 479.1125 (mobile), 479.2000 (mobile), 479.2375 (mobile), and 479.2875 (mobile) MHz. Frequencies 470.1375, 476.0125/479.0125, 476.0625/479.0625, 479.2375, and 479.2875 MHz are licensed to Somerset under call sign WPPB311. Frequency 473.2000 MHz is currently licensed to Jersey City under call sign WPXI593 and under the proposal would be licensed to Somerset. Frequency 473.0250 MHz is currently subject to an application filed by Somerset, FCC File No. 0001196273. Unassigned Part 22 frequency 479.1125 MHz is subject to an application filed by Somerset, FCC File No.0001196273, and unassigned Part 22 frequency 479.2000 MHz is subject to an application filed by Bayonne, FCC File No. 0000941858. Under the proposal these frequencies would be licensed to Somerset.

Syosset is currently authorized exclusive use of frequency pairs 476.0375/479.1625, 476.1375/479.1375, 476.1875/479.1875, 476.2375/479.2375, and 476.2875/479.2875 MHz under call sign WPYJ816. Under the proposal, Syosset would be licensed on frequency 479.0375 MHz and would delete frequency 479.1625 MHz.

In the proposal the public safety agencies reiterate that the individual requests for a waiver of Section 22.621 of the Commission's Rules, 47 C.F.R. § 22.621, and any other Commission rules that are necessary to grant the subject applications, pursuant to Section 337(c) of the Communications Act, as amended, 47 U.S.C. § 337(c), or, in the alternative, Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925. Section 337(c) of the Communications Act of 1934, as amended, states that the Commission shall grant an application by an entity seeking to provide public safety services to the extent necessary to permit the use of unassigned frequencies, if the Commission makes five specific findings: (1) no other spectrum allocated for public safety use is immediately available; (2) there will be no harmful interference to other spectrum users entitled to protection; (3) public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area in question; (4) the unassigned frequencies were allocated for their present use not less than two years prior to the grant of the application at issue; and (5) the grant of the application is consistent with the public interest. "Public safety services" are defined by 47 U.S.C. § 337(f) as services the sole or principal purpose of which is to protect the safety of life, health, or property, that are provided by the governmental entities or by non-governmental entities authorized by the governmental entity whose primary mission is the provision of such services, and that are not made commercially available to the public by the provider.

Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, provides that a waiver of the Commission's Rules may be granted if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or if the applicant has no reasonable alternative.

The public safety agencies state that their individual applications and waiver requests, as augmented by the proposal, will bring critical improvements to their respective public safety wireless communications capabilities. The public safety agencies state that the proposal will resolve competing

and conflicting applications, promote interoperability, advance spectrum management to benefit public safety, and conserve Commission resources that would be necessary to resolve each application individually. The public safety agencies believe that the proposal will bring about improvements in public safety communications more expeditiously and will allow a more effective design, construction and operation of the communication systems involved. The public safety agencies note that where the proposal envisions a frequency deletion so that it may be licensed to another agency, or where a commitment is made to withdraw a request under a pending application, that commitment is conditioned upon the Commission's approval of the overall proposal.

The public safety agencies assert in their individual applications and in the proposal that the five requirements of Section 337(c) of the Communications Act have been met: (1) a search for available spectrum indicates that the UHF channels sought are the only viable alternative; (2) the applications and waiver requests are supported by engineering analyses which claim to demonstrate interference protection to co-channel and adjacent channel incumbent licensees and channels under application; (3) each public safety agency states that its request is consistent with other public safety entities licensed on 470-480 MHz, Part 22 paging control channels in New York and New Jersey; the engineering analysis also demonstrates that the 470-512 MHz band is already heavily used in the New York City area for public safety operations; (4) the unassigned frequencies at issue were allocated for Part 22 on August 2, 1994, which became effective on January 1, 1995; therefore the unassigned frequencies were allocated for their present use more than two years ago; and (5) granting the applications and waivers requests will be in the public interest as it will allow otherwise vacant spectrum to be used by the public safety agencies for critical communications. In the alternative to a waiver of Section 337(c), the public safety agencies argue that a waiver is justified under the standards contained in Section 1.925 of the Commission's Rules.

Interested parties may file comments on the Proposal and Waiver Requests on or before June 7, 2004. Parties interested in submitting reply comments must do so on or before June 14, 2004. All comments should reference the subject waiver request including the DA number of this *Public Notice*, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20054. A copy of each filing should be sent to (1) Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554; (2) Maria Ringold, Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center, 445 Twelfth Street, S.W., Room CY-B529, Washington, D.C. 20554; and (3) Mr. Tom Eng, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division, 445 12th Street, S.W., Washington, D.C. 20554.

The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only by the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering 236 Massachusetts Avenue, N.E. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. *See* FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, Public Notice, 16 FCC Rcd 22165 (2001).

Each of the applications and waiver requests can be accessed electronically via the Commission's Universal Licensing System, <http://wireless.fcc.gov/uls>. The full text of the proposal, comments and reply comments will be available for inspection and duplication during regular business hours in the FCC Reference Information Center (RIC) of the Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). For further information regarding the public reference file for this Waiver Request, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418-1355.

Unless otherwise provided, requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See Sections 1.1200(a), 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this *Public Notice*, *ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

For further information, contact Mr. Tom Eng of the Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau at (202) 418-0019, TTY (202) 418-7233, or via e-mail to [Thomas.Eng@fcc.gov](mailto:Thomas.Eng@fcc.gov).

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

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